

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.21822 of 2007

Dated: 29.10.2007

Between:

Darshan Vijaysinh Bhatia and another.

... Petitioners

AND

Syed Abdul Khader and two others.

... Respondents

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.21822 of 2007

ORDER:-

This Writ Petition is filed for a Writ of Prohibition against respondent No.2-A.P.State Wakf Tribunal, Hyderabad (for short "the Tribunal") from continuing the proceedings in O.S.No.37 of 2007 filed by respondent No.1.

This Writ Petition is founded on the premise that the property, which is the subject matter of O.S.No.37 of 2007, is not a registered wakf and included in the list of wakf properties published under Section 5 of the Wakf Act, 1995 (for short "the Act").

Sri Srinivas Iyengar, learned counsel for the petitioner, at the hearing submitted that under Section 87 of the Act the Tribunal is barred from proceeding with the suit, appeal or other legal proceedings for enforcement of any right on behalf of any wakf, which has not been registered in accordance with the provisions of the Act and that, such proceedings, even if instituted, prior to the commencement of the Act, shall not be continued, heard, tried or decided. The learned counsel, however, conceded that in para 9 of the plaint filed in O.S.No.37 of 2007 a specific averment was made that the property is a registered notified wakf property. The petitioner has not filed the list of registered wakf properties in order to prima facie show that the suit schedule property is not a registered wakf property. The learned counsel for the petitioner, however, submitted that since the 1st respondent has not filed any evidence in the suit, the Tribunal ought not to have

entertained the suit.

It is trite that a Writ of Prohibition is issued in a case where the Court, Tribunal or any Authority inherently lacks jurisdiction to entertain and adjudicate the lis. In the instant case, the Tribunal is constituted to decide the disputes relating to registered wakfs. Therefore, it cannot be said that the Tribunal inherently lacks jurisdiction to entertain a dispute in respect of the property, which is claimed to be a registered wakf.

Whether the suit property is a registered wakf or not is a question of fact, which the Tribunal shall decide on the basis of the evidence, both oral and documentary, adduced by the parties to the suit. It is, therefore, premature to entertain a Writ, more so, in the nature of a Writ of Prohibition. It is always open to the petitioner to raise the same objection as is raised in this Writ Petition and seek dismissal of the suit on the ground that the property, which is subject matter of the suit, is not a registered wakf.

Subject to the above observations, the Writ Petition is dismissed.

C.V.NAGARJUNA REDDY,J

mnr

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